

REPRESENTATIVE FOR PETITIONER: Eugene Chewning

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JDPHD Investment Group, LLC)	
)	Petition No.: 53-005-07-1-4-00083
Petitioner,)	
)	Parcel: 53-05-33-203-016.000-005
v.)	
)	Monroe County
Monroe County Assessor,)	Bloomington Township
)	2007 Assessment
Respondent.)	

Appeal from the Final Determination of the
Monroe County Property Tax Assessment Board of Appeals

September 13, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The subject property is an apartment complex with more than 4 rental units and according to Ind. Code § 6-1.1-4-39(a) is entitled to an assessment valuation established by the lowest of the cost approach, the sales comparison approach, or the income capitalization approach. Although an appraisal ultimately concluded that its market value was \$4,100,000 as of October 16, 2007, the sales comparison approach in that appraisal indicated a value of \$3,735,000. Should the assessment be reduced to that lower valuation?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is an apartment complex located at 321 East 14th Street in Bloomington.
2. The Petitioner initiated an assessment appeal by filing a Form 130. The Property Tax Assessment Board of Appeals (PTABOA) mailed its decision on June 20, 2008. The Petitioners filed a Form 131 with the Board on August 4, 2008.
3. The PTABOA determined the total assessed value was \$4,170,700.
4. The Petitioner contends the total assessed value should be \$3,735,000.
5. Administrative Law Judge Kay Schwade held a hearing for this petition on June 23, 2010. There was no on-site inspection of the subject property by the Administrative Law Judge or the Board.
6. The following persons were sworn as witnesses at the hearing:
For the Petitioner – Maribeth Coller and Eugene Chewning,
For the Respondent – Judy Sharp and Ken Surface.
7. The following items are recognized as part of the record:
Board Exhibit A – Form 131 petition with attachments (including an appraisal and a settlement statement that the parties agreed would be admitted as evidence),¹
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet.

¹ Neither party submitted any other exhibits.

SUMMARY OF THE PETITIONERS' CASE

8. The subject property is an apartment complex with 97 apartment units. Based on Ind. Code § 6-1.1-4-39(a) the assessment should be only \$3,735,000 because that is what the sales comparison approach indicates. *Chewning testimony; Board Ex. A.*
9. In 2007 Gilbert S. Mordoh and Paul E. Weber conducted an appraisal of the subject property at the request of Regions Bank. The appraisal was requested for the purpose of financing a partnership buy-out. The partnership buy-out transaction reflected in the settlement statement involved the subject property and other properties, but the appraisal is only for the subject property. The appraisal covers the full value of the subject property. *Chewning testimony; Board Ex. A.*
10. In the appraisal, the value determined under the sales comparison approach is \$3,735,000 and the value determined under the income approach is \$4,120,000. The appraisal explains that it did not develop the cost approach. *Board Ex. A.*
11. Indiana Code § 6-1.1-4-39(a) states that residential rental property with more than 4 units is to be assessed at the lowest amount resulting from applying the cost approach, the sales comparison approach, or the income capitalization approach. The sales comparison approach in the appraisal supports an assessment of \$3,735,000. *Chewning testimony.*
12. The effective date of the appraisal is October 16, 2007, but the values would not have been higher on January 1, 2006. *Chewning testimony; Surface testimony; Board Ex. A.*²

² The following exchange took place during the cross-examination of Mr. Surface:

Question: "Between the date of the county's assessment of this property and October 2007 when we had the appraisal done, is it your opinion that properties of this type declined in value or increased in value, in general?"

Answer: "In general I can tell you that 2006-2007 in my experience there was a lot of activity of apartment complexes both in sales, construction/building. In terms of—I would say that they surely, in my opinion, that did not decrease. Whether or not they increased or not is to be determined. That would be my opinion."

Question: "OK. So what you are telling me then is that you think perhaps this number that Gil Mordoh produced in October of 2007 would not be lower than the value would have been at the beginning of 2006?"

Answer: "I don't believe that the appraisal ... would be any lower than what the value would be in 2006."

Question: "So, in effect, our appraisal done in October of 2007 is potentially on the high side, not on the low side?"

Answer: "I would say it is not on the low side."

SUMMARY OF THE RESPONDENT'S CASE

13. The Petitioner is relying on an appraisal that states the property value is \$4.1 million. *Meighen argument.*
14. On page 40 the appraisal states that the estimated market value of the property, as fully leased or sold, is \$4.1 million. The term “leased” indicates the use of the income approach to value. *Surface testimony; Board Ex. A.*
15. The effective date of the appraisal is October 16, 2007, which is approximately 22 months from the required valuation date for a 2007 assessment. In this case the required valuation date is January 1, 2006. *Surface testimony; Board Ex. A.*

ADMINISTRATIVE REVIEW AND BURDEN

16. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
17. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
18. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

19. A residential rental property with more than four rental units gets the benefit of specific valuation alternatives authorized by Ind. Code § 6-1.1-4-39(a), which provides that its true tax value is the lowest valuation determined from the three generally accepted approaches to value: cost, sales comparison, or income capitalization. Nobody disputed that the subject property is the type of property to which this provision applies. Consequently, the Petitioner can make its case based on whichever of those three approaches produces the lowest value.
20. This is not a case where an assessor's valuation of a property according to the Assessment Guidelines is presumed to be accurate. And this is not a case where an assessor has discretion to choose among the cost method, the comparable sales method, the income capitalization method, or other generally accepted appraisal principles to determine the assessed value of the subject property because Ind. Code § 6-1.1-4-39(a) specifies how the assessed value must be determined.
21. The appraisal is the principle evidence in this case. It contains 43 pages with a great deal of detail. It explains why the cost approach was not developed. It contains a section showing how the sales comparison approach leads to an estimated value of \$3,734,500. It also contains a section that shows how the income capitalization approach indicates a value of \$4,120,000. The appraisal is the work of two Indiana Certified General Appraisers, Gilbert S. Mordoh and Paul E. Webber, who "have many years of appraisal experience on a variety of residential, commercial, professional office, industrial, manufacturing, and farm type properties." They certified that "[o]ur analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute." Perhaps most importantly, nobody disputed the appraisers' qualifications or the quality and reliability of their work.

22. The cost approach, the comparable sales approach, and the income capitalization approach are the three most common and generally accepted techniques to determine value. In most assessment appeals, an appraisal's final estimate of value is more significant than the value indicated by any single approach. The Respondent appears to have that view in this case. But where Ind. Code § 6-1.1-4-39(a) applies the analysis must be different. From among those three valuation approaches, the one that indicates the lowest value is determinative.³
23. The record contains no substantial reason to doubt the sales comparison approach shown on pages 32-34 of the appraisal. This section of the appraisal is credible and reliable evidence establishing that based on the sales comparison approach the value of the subject property was \$3,735,000 as of October 16, 2007.
24. The valuation date for a 2007 assessment, however, is January 1, 2006. Regardless of the approach used to prove the market value-in-use of a property, the assessment must reflect its value as of January 1, 2006. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 472 (Ind. Tax Ct. 2005); Manual at 4. Consequently, a party relying on market value evidence to establish the market value-in-use must provide some explanation as to how the evidence demonstrates or is relevant to the property's value as of January 1, 2006. *Id.*
25. The Respondent focused on the valuation date requirement and the fact that the appraisal was as of October 16, 2007, which is a separation of approximately 22 months. The time of the appraisal is undoubtedly a critical point. The timing issue is potentially a fatal flaw in the Petitioner's case, *if* nothing satisfies the requirement to somehow relate the appraisal to the required valuation date. The Petitioner did not precisely prove what the valuation based on comparable sales would have been as of January 1, 2006. Nevertheless, it is clear that any difference there might be operates in favor of the

³ We are not implying that an appraisal is required to prove this kind of claim, but we are simply dealing with the evidence that was presented in this particular case. There was no attempt to rebut or impeach the qualifications of the appraisers, the methodologies they used, the facts they relied on, or anything in the appraisal. Specifically, the Respondent made no attempt to establish that there is anything wrong with the sales comparison analysis in the appraisal. Of course, Ind. Code § 6-1.1-4-39(a) would not require an assessment to be based on a value that the record demonstrates to be unreliable or incredible, but this case does not present that question.

Respondent and not in favor of the Petitioner. In undisputed testimony, Mr. Surface admitted that if the correct valuation date had been used the valuation would not have been any higher. Furthermore, examination of the appraisal itself shows that sale prices for the comparables were adjusted upward (3% per year) to get to the appraisal date. Therefore, if the sales comparison analysis in the appraisal had calculated a valuation as of January 1, 2006, the conclusion would not have been any more than \$3,735,000. Under these circumstances, that fact is enough to establish the relevance of the comparable sales analysis in the appraisal.

26. Coupled with the specific directive of Ind. Code § 6-1.1-4-39(a), the comparable sales analysis in the appraisal is sufficient to make a prima facie case for changing the assessment. *See Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 713 (Ind. Tax Ct. 2002) (defining a prima facie case as one in which the evidence is sufficient to establish a given fact and which if not contradicted will remain sufficient). “Although the burden of proof never shifts, once the taxpayer presents a prima facie case, the duty to go forward with the evidence shifts, and it is incumbent on the ... [Respondent] to rebut the taxpayer’s evidence and support ... [the assessment] with substantial evidence. *Id.*”
27. The Respondent failed to establish how the higher values indicated by the income capitalization approach or the appraisal’s final estimate of value might be relevant.
28. The Respondent’s case disregarded the specific statutory authorization for the assessment of the subject property to be based on the lowest valuation resulting from the cost approach, the comparable sales approach, or the income capitalization approach, but our determination will not do so.
29. Nothing in the record overcomes the fact that the sales comparison approach in the appraisal (which was not rebutted or impeached in any way) indicates a value of \$3,735,000. The assessment must be set accordingly.

SUMMARY OF FINAL DETERMINATION

30. The Board finds in favor of the Petitioner. The total assessment for the subject property must be changed to \$3,735,000.

This Final Determination for the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>